

GLEN E. McCUISTION

IBLA 84-611

Decided October 29, 1985

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application W-88256.

Reversed and remanded.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases:
Applications: Filing--Oil and Gas Leases: Applications: Drawings

Where amended regulations define a person or entity in the business of providing assistance to participants in the Federal simultaneous leasing program as one who signs, prepares, completes, or formulates applications, an entity which merely provides an applicant with parcel recommendations in the form of parcel numbers along with instructions of a general secretarial nature as to how the application should be completed, has not "formulated" the application within the meaning of 43 CFR 3112.0-5 or 43 CFR 3112.2-4.

APPEARANCES: Glen E. McCuiston, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Glen E. McCuiston has appealed from an undated decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting his simultaneous noncompetitive oil and gas lease application. His application for parcel WY-186 on the September 1983 list of parcels available for simultaneous oil and gas filings, had been selected with first priority.

BLM rejected appellant's application because he failed to indicate that Wesco Oil Properties (Wesco) had provided assistance with that application. Appellant had signed and dated Part B (Form 3112-6a) of his application, but had left blank on Part B a space entitled "FILING SERVICE'S FULL NAME, ADDRESS AND ZIP CODE (IF APPLICABLE)."

Apparently, during the course of its routine review of lease applications, BLM determined Wesco had provided assistance to appellant in filing his lease application, and, accordingly, rejected that application, citing 43 CFR 3112.2-4. BLM's decision provides the following rationale for that rejection:

Federal Register Notice 48 FR 37656 published August 19, 1983 stated: ". . . Pursuant to the final rulemaking of July 22, 1983 (48 FR 33648) . . . The Bureau of Land Management hereby gives notice that effective August 22, 1983, it will strictly enforce the provisions of . . . § 3112.2-4 which pertain to filing assistance. Amended § 3112.2-4 requires identification of any party rendering any type of assistance in the filing of an application submitted under Part 3112." [Emphasis added.]

In his "Notice of Appeal," appellant states that the name of Wesco was omitted pursuant to instructions provided by Wesco. Moreover, appellant argues "[i]f any one is at fault its [sic] Wesco Oil Properties--for not properly advising its people and their associates of the new Regulations and upgrading Wesco's material." 1/

Attached to appellant's "Notice of Appeal" is a copy of a letter he received from Wesco regarding how to approach preparing and submitting his lease application. Our disposition of this appeal turns upon whether the "assistance" provided, as evidenced by this letter, falls within the regulation invoked by BLM in rejecting appellant's application. Hence, we deem it useful to quote from this letter:

Enclosed you will find two (2) sets of blank filing forms, Part A and Part B.

MAKE SURE THAT:

1. Entry form is manually signed in ink and dated by you.
2. You have completed Part A of the form. Part A only needs to be submitted [one] time (forever) UNLESS you have an address change.
3. Use Part B of the form to submit your entries. If you are using two (2) different states, use separate forms for each one.
4. Your forms are [to be] completely filled out in PENCIL. Do NOT use ink pens.
5. Entry forms must not be mutilated, folded, erased or altered in any manner.

1/ Appellant also states in his "Notice of Appeal" that "regulation 43 CFR 3112.2-4 which became effective August 22, 1983 was not provided to me nor was I aware of such ruling." We note, however, that those who deal with the Government are presumed to have knowledge of the law and the regulations duly promulgated pursuant thereto. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

6. On Part B - In the section referring to "Filing services full name, address and zip code", YOU MUST LEAVE BLANK! The reason being, we are an advisory service and not a filing service.
7. Be sure to enclose your personal check made payable to the Bureau of Land Management on behalf of yourself, in the amount of \$75.00 per parcel recommendation.
8. Mail forms to reach their destination before 9/21/83 at 4:30 P.M.
9. Failure to follow these instructions may result in rejection of the entire form and resulting forfeiture of the filing fee.

* * * * *

We have provided a pre-addressed envelope for your convenience. If you have any questions, please call us toll free.

Additionally, Wesco's letter instructs appellant that where the application "calls for parcel selections, use the following recommendations * * *." Appellant's application was drawn with priority for WY-186, which was among those recommended by Wesco.

[1] The regulation governing filing assistance applied by BLM in rejecting appellant's application provides as follows:

Any applicant receiving the assistance of any person or entity which is in the business of providing assistance to participants in the Federal simultaneous oil and gas leasing program shall indicate on the lease application the name of the party or filing service that provided assistance.

43 CFR 3112.2-4. The Department promulgated a revised regulation, effective August 22, 1983, which defined the term "any person or entity which is in the business of providing assistance to participants in the Federal simultaneous oil and gas leasing program" to mean:

[T]hose enterprises, commonly known as filing services, which sign, formulate, prepare or otherwise complete or file applications for oil and gas leases for consideration. All other services such as general secretarial assistance or general geologic advice whether or not it is specifically related to Federal lease parcels or leasing, are excluded from this definition.

43 CFR 3112.0-5. See 48 FR 33678 (July 22, 1983).

Deleted from this revised regulation was language included in its predecessor, 43 CFR 3100.0-5(d) (1982), to the effect that enterprises which "offer advice on formulation or preparation, mail, deliver, receive mail or

otherwise complete or file lease applications," must be disclosed to BLM. Despite this express deletion, the preamble to the 1983 regulation purported to bring back within the ambit of that regulation those very enterprises explicitly left out:

The definition of the term "person or entity providing assistance to the participants in the Federal simultaneous oil and gas program" contained in § 3112.0-5 of the final rulemaking is intended to cover not only those entities that perform services commonly known as "filing services" but also those that furnish advice or counseling that is directly related to the filing of simultaneous oil and gas lease applications. Agreements with these types of entities must be identified in the application. [Emphasis supplied.]

Moreover, on August 19, 1983, the Department published a Federal Register notice at 48 FR 37656, stating its intent to "strictly enforce the provisions of amended * * * § 3112.2-4 which pertain to filing assistance." The stated purpose for the strict enforcement was to "preserve the integrity of the simultaneous oil and gas lease program by ensuring against multiple filings on a single parcel as prohibited by amended § 3112.5-1." The Department stated in the Federal Register notice that the provision "requires identification of any party rendering any type of assistance in filing of an application submitted under Part 3112. [Emphasis added.]

This Board considered the effect to be given 43 CFR 3112.0-5 and 43 CFR 3112.2-4 in Ronald Valmonte, 87 IBLA 197 (1985), in which the facts and the issue presented are similar to those of the present appeal. As to the obvious conflict between 43 CFR 3112.0-5 and 43 CFR 3112.2-4 on the one hand, and the preamble and notice on the other, the Board ruled that the regulation itself is "clear and unambiguous," and that "BLM is obligated to enforce the regulation as it is written." 87 IBLA at 201. The preamble "can best be described as contradicting the express regulatory language," and the notice does not reflect "the clear language of the regulation limiting the definition of filing service assistance to those entities which sign, formulate, prepare or otherwise complete or file applications and no other." 87 IBLA at 201. Although preambles and notices may be useful in the interpretation of an ambiguous regulation, where the regulation is clear, as is 43 CFR 3112.0-5 and 43 CFR 3112.2-4, preambles and notices may not be used to "supplant the regulation." Id.

The question presented on this appeal is whether Wesco is "in the business of providing assistance to participants in the Federal simultaneous oil and gas leasing program" as defined at 43 CFR 3112.0-5. Wesco is in that business if it "sign[s], formulate[s], prepare[s], or otherwise complete[s] or file[s] applications for oil and gas leases for consideration." 43 CFR 3112.0-5. We find that Wesco's providing parcel recommendations along with instructions as to how to properly complete a lease application does not bring it within the ambit of the regulations.

We are bound by this Board's ruling in Ronald Valmonte, supra, wherein we held that Wesco had not rendered "assistance" to Valmonte by making parcel recommendations, so that Valmonte was under no legal compulsion to indicate

on his lease application that he had entered into a contract with Wesco. The Board rejected BLM's contention that by making parcel recommendations Wesco had "formulated" Valmonte's application. We reaffirm that Wesco's letter detailing for appellant the steps he should take in preparing the lease application does not qualify Wesco as a "filing service" within the meaning of 43 CFR 3112.0-5, since by offering the advice contained in the letter, Wesco did not "sign, formulate, prepare or otherwise complete or file" appellant's application. 2/

As in Ronald Valmonte, Wesco did not complete any portion of Part B for appellant; rather, the complete task of preparing that form, submitting the application fee, and mailing the application package was left to appellant's performance. His application for parcels which were in fact recommended by Wesco in accordance with a letter of instructions as to how to complete the application does not obscure the fact that his completion of the process was an exercise of "free choice." "[Appellant] may well have formulated his application based upon the advice supplied by Wesco, but that formulation was, nevertheless, his own." 87 IBLA at 202.

Because Wesco did not "sign, formulate, prepare or otherwise complete or file" appellant's simultaneous noncompetitive oil and gas lease application, appellant was not required to list Wesco on that application. Hence, BLM's rejection of appellant's application was improper.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case file is remanded for further action consistent herewith.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Franklin D. Arness
Administrative Judge

2/ The present case may be distinguished from John G. O'Leary, 86 IBLA 131 (1985), where the filing service actually filled in the application, prepared a remittance with the proper amount to cover filing fees and transmitted the application to the applicant with the instructions that "your only responsibility is to sign your name on Part B as it appears on Part A."

Also distinguishable is James D. Buerger, 88 IBLA 168 (1985) where the filing service mailed to its client the applications, parcel recommendations, and a cashier's check, along with instructions "to sign your name on Part B . . . as it appeared on Part A," appropriately date the application, then place Part B and the cashier's check in a manila envelope, affix proper postage, and mail it in "time to insure that the package arrives at its destination on or before the deadline date."

